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# MEDIA ADVISORY

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## Supreme Court Grants Review in Prop. 80 Case

San Francisco—The California Supreme Court today granted a petition for review in an election case involving Proposition 80, the statewide ballot measure that would re-regulate energy suppliers in California. (*Independent Energy Producers v. Bruce McPherson; Finkelstein et al, Real Parties in Interest, S135819.*) The Court of Appeal had ruled that Proposition 80 should be removed from the ballot, concluding that article XII, section 5 of the California Constitution authorized only the Legislature, and not the electorate through the initiative process, to adopt the proposed measure.

The Supreme Court's unanimous order directed the Secretary of State and other public officials to place Proposition 80 on the ballot for the special election to be held this fall. The court's order stated, "Because, unlike the Court of Appeal, at this point we cannot say that it is clear that article XII, section 5, of the California Constitution precludes the enactment of Proposition 80 as an initiative measure, we conclude that the validity of Proposition 80 need not and should not be determined prior to the November 8, 2005 election." The order further stated that after the election the court would determine whether to retain jurisdiction and resolve the issues raised in the petition.

The order was signed by Chief Justice Ronald George and Associate Justices Joyce Kennard, Marvin Baxter, Kathryn Werdegarr, Ming Chin, and Carlos Moreno. The full text follows:

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(over)

**S135819**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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INDEPENDENT ENERGY PRODUCERS ASSOCIATION et al., Petitioners,

v.

BRUCE MCPHERSON as Secretary of State etc., Respondent;  
ROBERT FINKELSTEIN et al., Real Parties in Interest.

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Petition for review GRANTED.

The stay issued by the Court of Appeal as part of its July 22, 2005, decision, restraining the Secretary of State from taking any steps, pending the finality of the Court of Appeal’s decision, to place Proposition 80 in the ballot pamphlet or on the ballot of the special election to be held on November 8, 2005, is vacated. As the Court of Appeal recognized, California authorities establish that “it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people’s franchise, in the absence of some clear showing of invalidity.” (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4.) Because, unlike the Court of Appeal, at this point we cannot say that it is clear that article XII, section 5, of the California Constitution precludes the enactment of Proposition 80 as an initiative measure, we conclude that the validity of Proposition 80 need not and should not be determined prior to the November 8, 2005 election. Accordingly, the Secretary of State and other public officials are directed to proceed with all the required steps to place Proposition 80 in the ballot pamphlet and on the ballot of the special election to be held on November 8, 2005. After that election, we shall determine whether to retain jurisdiction in this matter and resolve the issues raised in the petition.

George

*Chief Justice*

Kennard

*Associate Justice*

Baxter

*Associate Justice*

Werdegar

*Associate Justice*

Chin

*Associate Justice*

Moreno

*Associate Justice*

*Associate Justice*